

### **REMARKS**

Claims 1-24 are pending in this application. No claims are added and no claims are cancelled. Thus, after entry of this amendment, **claims 1-24 will still be pending.**

### **EXAMINER INTERVIEW**

Applicants thank Examiner Asdjodi for the brief telephone conferences on July 8, 2008 with Applicants' representative Jodi L. Connolly, during which the rejection of claim 17 was discussed. The Examiner confirmed that the Fleet *et al.* reference was unintentionally listed in connection with the rejection of claim 17 under 35 U.S.C. §103(a). Accordingly, the Office action should have indicated that claim 17 is unpatentable in view of Dietze, Kooistra, Shatila and Poulos *et al.*

### **REJECTIONS UNDER 35 U.S.C. §103**

**Claims 1-5, 8-16 and 18-24** are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Dietze (*British Medical Journal*, February 22, 1936, pages 372-373), in view of Shatila (U.S. Patent No. 3,975,551) and Kooistra (U.S. Patent No. 3,725,547).

**Claims 6 and 7** are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Dietze, as applied to claim 1, in view of Poulos *et al.* (U.S. Patent No. 6,132,786).

**Claim 17** is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Dietze, in view of Kooistra, Shatila and Poulos *et al.*

The Office alleges that Dietze teaches antimicrobial and disinfectant properties of wine comprising 8.3-11.3% alcohol and a pH of 2.78-3.49, wherein the wine completely destroys any pathogenic organism. Shatila is described as teaching an antimicrobial sulfur dioxide in food preservation at a concentration of at least 200 ppm. The Office further alleges Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt. Finally, Poulos *et al.* is alleged to teach long-term mold inhibition in food products comprising tartaric acid at a concentration of 0.01-3%.

The Office alleges it would have been obvious to combine the disinfecting wine of Dietze with the sulfur dioxide of Shatila (claims 1, 2, 4, 5 and 8-13); the salt concentrations of Kooistra (claim 3); and the tartaric acid concentrations taught by Poulos *et al.* (claims 6 and 7). Claims 14-19 are rejected

in view of the combination of Dietze, Kooistra, Shatila and/or Poulos *et al.* for the reasons stated above. The Office further alleges that Dietze teaches a disinfection method comprising a wine composition capable of complete elimination of bacterial growth over a short period of time (claims 20-23). In regard to claim 24, the Office alleges that the references teach all of the claimed reagents and antibacterial efficacy of the claimed wine-based composition, thus the claimed effects would implicitly be achieved by the claimed composition. Applicants traverse each of the above-listed rejections.

Each of the rejections set forth by the Office relies on the Dietze reference, which was published over 70 years ago (1936). In addition, Shatila (1976) and Kooistra (1972) are over 30 years old. Applicants submit that this is clear evidence that the combination of elements of the claimed compositions would not have been obvious to one of ordinary skill in the art as of the priority date of the application (November 27, 2002). If it had been obvious to combine wine (containing alcohol) with salt and sulfur dioxide to produce a disinfectant, Applicants submit it would not have taken until 2002 to invent such a disinfectant. Applicants were the first to combine the elements of the claimed compositions and demonstrate the effectiveness of the compositions as superior disinfectants. Thus, for at least this reason, claims 1-24 are not obvious in view of the cited references.

Applicants further note that although the Office refers to the reference published in the British Medical Journal (February 22, 1936, pages 372-373) as the Dietze reference, it is in fact a brief review of Dietze (*Zentralblatt für Bakteriologie*, January 3, 1936), which was published in German. The British Medical Journal article is an interpretation of Dietze written by the editors of the journal, presumably based on an English translation of Dietze. As such, no data or original description of the research carried out by Dietze is provided. Thus, one of skill in the art, upon reading the British Medical Journal review, could not be certain of the accuracy of the report and would have no motivation to combine this reference with the other references cited by the Office to reach the claimed invention.

Furthermore, in regard to claim 2, none of the cited references teaches or suggests the use of waste wine, surplus wine, cluster thinnings wine or pomace wine. The wine taught by Dietze was produced for use as a beverage and contained 8.33-11.31% alcohol. In contrast, the current application teaches that the claimed compositions can utilize any type of waste wine, which is not suitable for consumption, including cluster thinnings wine and pomace wine. Waste wines have a lower alcohol

content than regular wine. Example 3 and Example 4 of the instant application teach the use of cluster thinnings wine and pomace wine, respectively, as a disinfectant. In these examples, the waste wine had an alcohol content of approximately 6%. This percentage is significantly lower than the alcohol content taught by Dietze. None of the other cited references teaches the use of alcohol as a disinfectant, and thus do not cure this deficiency. Since the combination of cited references does not teach each and every limitation of the pending claims, the Office has failed to establish a *prima facie* case of obviousness against at least claim 2.

For at least the reasons stated above, Applicants request withdrawal of all rejections under 35 U.S.C. §103(a).

### **REQUEST FOR INTERVIEW**

Applicants expressly request a telephone interview prior to issuance of the next Office action. It is believed that a brief discussion of the merits of the present application may expedite prosecution. This request is being submitted under MPEP §713.01, which indicates that an interview may be arranged in advance by a written request.

### **CONCLUDING STATEMENT**

Applicants believe that the foregoing comprises a full and complete response to the Office action of record. Withdrawal of the pending rejections and reconsideration of the claims is respectfully requested.

Respectfully submitted,

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